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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : ERNEST W. MOODY

Serial No.: 09/854,156

Art Unit: 3711

Filed: May 10/2001

Examiner: Mendiratta, Vishu K.

For: ELECTRONIC MULTI-HAND STUD POKER GAMES

MAIL STOP APPEAL BRIEF--PATENTS
Commissioner for Patents
P.O. BOX 1450
Alexandria, VA 22313-1450

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APPELLANTS' APPEAL BRIEF

1. REAL PARTY IN INTEREST

This application has not yet been assigned, but it is under contract to be assigned to Action Gaming, Inc., a Nevada corporation.

I hereby certify that this correspondence is being deposited with the United States Postal Service as on this date May 10, 2003 in an envelope as "Express Mail Post Office to Addressee" Mailing Label No. **EU577554937US** addressed to: MAIL STOP APPEAL BRIEF-PATENTS, Commissioner for Patents, P.O. BOX 1450, Alexandria, VA 22313-1450.

Ernest W. Moody

Applicant

Signature

May 10, 2003

Date of Signature

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2. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

3. STATUS OF CLAIMS

This application was filed with Claims 1-26. Claims 1-26 stand rejected.

4. STATUS OF AMENDMENTS

There are no Amendments after Final Rejection.

5. SUMMARY OF THE INVENTION

The method of the present invention involves a card game in which

Claim 14 is representative of the method of play of the present invention:

Claim 14. A method of playing a stud poker card game in which a final hand has a predetermined number of cards comprising:

a) the player selecting to play at least two hands (Fig. 1);
b) a player making a wager which is allocated among the hands selected to be played by the player (Fig. 1);

c) dealing and displaying face up a number of partial hands of less than the predetermined number of cards, the number of partial hands corresponding to the number of hands selected to be played by the player, each partial hand having the same cards by

suit and rank (Fig. 1);

d) dealing and displaying face up additional cards to each hand to complete each hand so that each final hand has the predetermined number of cards (Fig. 2);

e) determining the poker hand ranking of each final hand;
and

f) paying the player a pre-established amount based on the amount of the wager on each hand if the final hand comprises a predetermined poker hand ranking.

The method of play of Claim 14 recites a stud poker game in which the player first selects to play a plurality of hands, at least two hands. The player makes a wager which is allocated among the number of hands selected to be played by the player.

Partial hands corresponding to the number of hands selected to be played by the player are now dealt and displayed face up. For example, if the player has selected to play two hands, then two partial hands are dealt and displayed face up to the player.

Each partial hand has the same cards by suit and rank.

Cards are then dealt to each hand to complete the hand. Winning poker hands are paid and non-winning poker hands are losers.

Claim 1 is another independent claim and is similar in scope to Claim 14 except that the final hand has at least five cards, instead of having a predetermined number of cards.

Claim 21 is another independent claim and is similar in scope to Claim 14 except that the each partial hand displayed to the player has the same preselected cards. For example, the preselected cards could be from the group consisting of a Four Card Straight Flush, a Four Card Flush, a Four Card Straight, a Three-of-a-Kind, a Two Pair and a Pair (Claim 22).

6. ISSUES

1. Whether Claims 1, 4, 14, 21 and 26 are unpatentable under 35 U.S.C. §102 as anticipated by Williams.

2. Whether Claims 2, 3, 5, 8-13, 15-17, 20 and 22 are unpatentable under 35 U.S.C. §103 over Williams in view of Johnson.

3. Whether Claims 6, 7, 18, 19, 23 and 24 are unpatentable under 35 U.S.C. §103 over Williams in view of Yoseloff.

4. Whether Claim 25 is unpatentable under 35 U.S.C. §103 over Williams in view of Kadlic.

7. GROUPING OF CLAIMS

Claims 1-20 stand together as the first group of claims. The first group of claims are the basic claims covering Appellant's invention of dealing a plurality of partial hands having the same cards by suit and rank and then completing each partial hand to be a final stud poker hand having a predetermined number of cards such as five cards.

Claims 21-26 stand together as the second group of claims. This second group of claims specifies that the partial hands are the same **preselected** cards which Appellant submits is a separately patentable step to be explained in the Argument section below.

8. ARGUMENTS

A. The First Group of Claims

Claim 1 and Claim 14 (the two independent claims in the first group of claims) stand rejected under 35 U.S.C. §102 as anticipated by Williams.

In order for an anticipation rejection under 35 U.S.C. § 102 to be proper, each and every step of the claims must be disclosed in the reference to Williams. Appellant submits that the reference to Williams does not disclose each and every step of the claims.

Williams discloses a draw poker game. Two face up community cards are dealt and a plurality of hands with face down cards are dealt. The player may discard and replace none, one or both of the community cards. After this draw step is completed, the community cards are used with each of the hands of the face down cards to make final five card hands. There is simply no disclosure in Williams of a stud poker game. Draw poker permits the discarding and replacement of cards while stud poker does not permit the discarding and replacement of cards.

In add. to what is above

no answer

Claim 14 is the broadest claim and recites a method of playing a stud poker game. In Claim 14, a plurality of partial hands are dealt, with each partial hand having the same cards by suit and rank. In Williams, there is only one partial hand dealt which comprises two community cards that may be discarded and replaced. In Claim 14, there is no discard and replacement step as is set forth in the Williams's method of play.

In Claim 14, the player makes a wager which is allocated among the number of hands the player selects to play. In Williams, there is a first wager that applies to all hands. The player later has an opportunity to double his wager, but again the extra wager applies to all hands.

Because Williams does not disclose each and every step of Claim 14, the rejection of Claim 14 under 35 U.S.C. § 102 is improper and should be reversed.

In the Final Rejection in Paragraph 8, the Examiner states "that it is not important whether Williams discloses or does not disclose a stud poker." Claim 14 recites that the method of play is a stud poker game - Appellant submits that it is important and that if Williams is not a stud poker game, then Williams cannot anticipate Claim 14.

The Examiner further states that he "does not agree that Williams deals only one partial hand." Appellant does not agree with the Examiner. Additionally, as discussed above, Williams

discloses a discard and draw step applicable to the first two cards which makes Williams's method of play something other than a stud poker game and therefore the method of play of Williams does not anticipate Claim 14.

Claim 1 is the other independent claim in the first group of claims and is similar in scope to Claim 14. However, Claim 1 specifies that the final hand has five cards. For the same reasons as set out above in regard to the discussion of Claim 14, Appellant submits that Williams does not anticipate Claim 1.

Because Williams does not disclose each and every step of Claim 1, the rejection of Claim 1 under 35 U.S.C. § 102 is improper and should be reversed.

Claims 15-20 depend from Claim 14 and Claims 2-13 depend from Claim 1 and stand or fall together with Claim 14 and Claim 1, respectively. The secondary reference to Johnson is relied upon to show hands having other than five cards and the secondary reference to Yoseloff is relied upon to show dealing cards from a depleted deck. Neither of these references overcomes the deficiencies of Williams with respect to the independent claims 14 and 1 which is recognized by the Examiner since these secondary references are only applied to the dependent claims.

B. The Second Group of Claims

Claim 21 (which is the only independent claim in the second group of claims) stands rejected under 35 U.S.C. §102 as anticipated by Williams.

In order for an anticipation rejection under 35 U.S.C. § 102 to be proper, each and every step of the claims must be disclosed in the reference to Williams. Appellant submits that the reference to Williams does not disclose each and every step of the claims.

Williams discloses a draw poker game. Two face up community cards are dealt and a plurality of hands with face down cards are dealt. The player may discard and replace none, one or both of the community cards. After the draw step is completed, the community cards are used with each of the hands of the face down cards to make final five card hands. There is simply no disclosure in Williams of a stud poker game. Draw poker permits the discarding and replacement of cards while stud poker does not permit the discarding and replacement of cards.

Claim 21 is similar in scope to Claim 14, but specifies that the partial hand comprises preselected cards. As discussed in the specification, these preselected cards can be certain poker hand groupings, such as a Four Card Straight Flush, a Four Card Flush, a Four Card Straight, a Three-of-a-Kind, a Two Pair and a Pair (Claim 22). The Examiner merely lumps Claim 21 (and its dependent claims) in with the other rejected claims and the Examiner never addresses

the issue of using preselected cards as the partial hands.

In Claim 21, a plurality of partial hands of preselected cards are dealt, with each partial hand having the same preselected cards by suit and rank. In Williams, there is only one partial hand dealt which comprises two community cards that may be discarded and replaced. In Claim 21, there is no discard and replacement step as is set forth in the Williams's method of play.

Williams also does not disclose that the one partial hand comprises preselected cards.

In Claim 21, the player makes a wager which is allocated among the number of hands the player selects to play. In Williams, there is a first wager that applies to all hands. The player later has an opportunity to double his wager, but again the extra wager applies to all hands.

Because Williams does not disclose each and every step of Claim 21, the rejection of Claim 21 under 35 U.S.C. § 102 is improper and should be reversed.

Claims 22-26 depend from Claim 21 and are submitted to be allowable for the same reasons that Claim 21 is allowable. Appellant acknowledges that Claims 22-26 stand or fall with Claim 21.

Kadlic is relied upon by the Examiner for the teaching of selecting one of the partial hands. Kadlic, however like Williams, is a draw poker game. There is nothing in Kadlic that overcomes

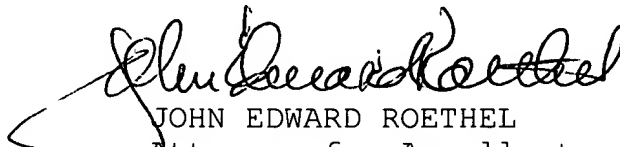
the deficiencies of Williams in that Williams is a draw poker game and Claim 25 is directed at a stud poker game. The combination of Kadlic with Williams still results in a draw poker game. Likewise, there is nothing in Kadlic that teaches or suggests using preselected partial hands.

9. CONCLUSION

Appellant submits that Claims 1, 4, 14, 21 and 26 have been improperly rejected by the Examiner under 35 U.S.C. §102. Appellants further submits that Claims 2, 3, 5-13, 15-20 and 22-25 have been improperly rejected by the Examiner under 35 U.S.C. §103. Appellant respectfully requests that the Board of Appeals reverse the Examiner's rejections of Claims 1-26 and remand this application to the Examiner for further action consisting of a Notice of Allowance.

An Appendix is attached to this Brief setting out in full the claims on appeal.

Respectfully submitted,


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APPENDIX

Claim 1. A method of playing a stud poker card game in which a final hand has at least five cards comprising:

- a) the player selecting to play at least two hands;
 - b) a player making a wager which is allocated among the hands selected to be played by the player;
 - c) dealing and displaying face up a number of partial hands of less than five cards, the number of partial hands corresponding to the number of hands selected to be played by the player, each partial hand having the same cards by suit and rank;
 - d) dealing and displaying face up additional cards to each hand to complete each hand so that each final hand has at least five cards;
 - e) determining the poker hand ranking of each final hand;
- and
- f) paying the player a pre-established amount based on the amount of the wager on each hand if the final hand comprises a predetermined poker hand ranking.

Claim 2. The method of Claim 1 in which each partial hand has four cards.

Claim 3. The method of Claim 1 in which each partial hand has three cards.

Claim 4. The method of Claim 1 in which each partial hand has two cards.

Claim 5. The method of Claim 1 in which each partial hand has one card.

Claim 6. The method of Claim 1 in which the additional cards for each final hand are dealt from a depleted deck which consists of the original deck of cards less the cards dealt as the partial hand.

Claim 7. The method of Claim 1 in which all of the additional cards for each final hand are dealt from the same original deck of cards less the cards dealt as the partial hand.

Claim 8. The method of Claim 1 in which the final hand has at least six cards and the predetermined poker hand rankings are based on the best five card poker ranking of the final hand.

Claim 9. The method of Claim 1 in which the final hand has at least six cards and the predetermined poker hand rankings are based on the best six card poker ranking of the final hand.

Claim 10. The method of Claim 1 in which the final hand has at least seven cards and the predetermined poker hand rankings are based on the best five card poker ranking of the final hand.

Claim 11. The method of Claim 1 in which the final hand has at least seven cards and the predetermined poker hand rankings are based on the best six card poker ranking of the final hand.

Claim 12. The method of Claim 1 in which the final hand has at least seven cards and the predetermined poker hand rankings are based on the best seven card poker ranking of the final hand.

Claim 13. The method of Claim 1 in which the player is awarded a bonus payout whenever the player achieves at least two final hands of the same poker hand ranking.

Claim 14. A method of playing a stud poker card game in which a final hand has a predetermined number of cards comprising:

- a) the player selecting to play at least two hands;
- b) a player making a wager which is allocated among the hands selected to be played by the player;
- c) dealing and displaying face up a number of partial hands of less than the predetermined number of cards, the number of partial hands corresponding to the number of hands selected to be

played by the player, each partial hand having the same cards by suit and rank;

d) dealing and displaying face up additional cards to each hand to complete each hand so that each final hand has the predetermined number of cards;

e) determining the poker hand ranking of each final hand;
and

f) paying the player a pre-established amount based on the amount of the wager on each hand if the final hand comprises a predetermined poker hand ranking.

Claim 15. The method of Claim 14 in which the predetermined number of cards in the final hand is two.

Claim 16. The method of Claim 14 in which the predetermined number of cards in the final hand is three.

Claim 17. The method of Claim 14 in which the predetermined number of cards in the final hand is four.

Claim 18. The method of Claim 14 in which the additional cards for each final hand are dealt from a depleted deck which consists of the original deck of cards less the cards dealt as the partial hand.

Claim 19. The method of Claim 14 in which all of the additional cards for each final hand are dealt from the same original deck of cards less the cards dealt as the partial hand.

Claim 20. The method of Claim 14 in which the player is awarded a bonus payout whenever the player achieves at least two final hands of the same poker hand ranking.

Claim 21. A method of playing a stud poker card game in which a final hand has a predetermined number of cards comprising:

- a) the player selecting to play at least two hands;
 - b) a player making a wager which is allocated among the hands selected to be played by the player;
 - c) dealing and displaying face up a number of partial hands of less than the predetermined number of cards, the number of partial hands corresponding to the number of hands selected to be played by the player, each partial hand having the same preselected cards by suit and rank;
 - d) dealing and displaying face up additional cards to each hand to complete each hand so that each final hand has the predetermined number of cards;
 - e) determining the poker hand ranking of each final hand;
- and

f) paying the player a pre-established amount based on the amount of the wager on each hand if the final hand comprises a predetermined poker hand ranking.

Claim 22. The method of Claim 21 in which the preselected cards for the partial hand are from the group consisting of a Four Card Straight Flush, a Four Card Flush, a Four Card Straight, a Three-of-a-Kind, a Two Pair and a Pair.

Claim 23. The method of Claim 21 in which the additional cards for each final hand are dealt from a depleted deck which consists of the original deck of cards less the cards dealt as the partial hand.

Claim 24. The method of Claim 21 in which all of the additional cards for each final hand are dealt from the same original deck of cards less the cards dealt as the partial hand.

Claim 25. The method of Claim 21 in which the partial hand having the same preselected cards is selected by the player.

Claim 26. The method of Claim 21 in which the partial hand having the same preselected cards is randomly selected.